

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 133 of 2009**

1. Naresh Kumar Gupta, S/O Late Kanhyalal, aged about 42 years, R/o Dhangardipa, Raigarh, Tah. & Distt. Raigarh (CG)
2. Smt.Saroj Gupta, W/O Subhash Gupta, D/o Late Kanhyalal, Occupation – House wife, R/o Dhangardipa, Raigarh, Tah. & Distt. Raigarh (CG)

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1. Dinesh Bhargaw, S/o P.N. Bhargaw, Manager, Zindal Steel and Power Limited, Kharsia Road, Patrapali, Raigarh, Raigarh, Tah. & Dist. Raigarh (C.G.)
2. Smt.Vipul Devi Wd/O Late Kanhyalal, aged about 66 years, Occupation – House wife, R/o Dhangardipa, Raigarh, Tahsil and Dist. Raigarh (CG)
3. State of Chhattisgarh through District Magistrate, Raigarh, Distt. Raigarh (C.G.)

---- Respondents

For Appellants	:	Mr. Manoj K. Sinha, Advocate.
For Respondent No.1	:	None appears
For Respondent No.2	:	None appears
For Respondent No.3	:	Mr. Neeraj Jain, G.A.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board by T.P.Sharma, J.

11/03/2015

By this appeal filed under Section 96 of the Code of Civil Procedure Code, the appellants have challenged the judgment and decree dated 05.05.2009 passed in Civil Suit No. 14A/2007 by the District Judge, Raigarh, whereby the trial Court dismissed the suit for declaration of title and possession ex parte, on the ground that the appellants have failed to prove the fact that the property was ancestral property.

2. As per plaint allegations, suit property in question bearing Kh.No.468, mainly Kh.No.468/1, area 14.998 hectares situated at village Kachkoba, Tahsil Gharghoda was

ancestral property of the appellants. Respondent No.1 succeeded and obtained the sale deed in his favour taking undue advantage of the illness of father of the appellants by committing fraud.

3. After providing full opportunity of hearing to the parties, the trial Court dismissed the suit. Respondents No.1 & 2, namely Dinesh Bhargaw and Smt. Vipula Devi were ex parte before the trial Court.

4. We have heard Mr. Manoj K. Sinha, learned counsel for the appellant and perused the record of the trial Court including judgment and decree impugned.

5. At the outset, learned counsel for the appellant submits that although that the appellant No.1 has deposed that old Khasra Numbers of the suit property has been changed and new Kh.No.481/1 was allotted, but, he has failed to file any document to substantiate the aforesaid evidence and pleadings. He further submits that he has pleaded the factum of fraud committed by respondent No.1, but, in this behalf also he has failed to make specific pleading relating to such fraud.

4. The respondents were ex parte before the trial Court. Based on the pleadings, evidence and aforesaid facts, the trial Court dismissed the suit. The trial Court ought to have relied upon the evidence of the plaintiffs or ought to have provided an opportunity to the appellants to adduce additional evidence and pleadings, if any. The trial Court, without considering the evidence led by the appellants, without giving a proper opportunity to the appellants to adduce additional evidence and pleadings, proceeded ex parte and dismissed the suit as such. Therefore, on this count alone, the matter needs remand.

5. In the result, the judgment and decree dated 05.05.2009 is hereby set aside. The case is remanded back to the trial Court for providing an opportunity to the parties to amend the pleadings and to adduce additional evidence. After issuing notice to the respondents and after hearing the parties, decide the case afresh, on its own merits in accordance with law.

6. The appellants shall remain present before the trial Court on 23.04.2015. Record of the trial Court be sent back forthwith.

7. No order as to costs.

JUDGE

JUDGE

Anjani